

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

FILED
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2004 JAN -8 P 11 21

MARK E. FEINERSTEIN, Individually and On)
Behalf of All Others Similarly Situated,)
)
Plaintiff,)

vs.)

MARSH & MCLENNAN COMPANIES, INC,)
PUTNAM INVESTMENTS TRUST, PUTNAM)
INVESTMENT MANAGEMENT LLC, PUTNAM)
INVESTMENT FUNDS, PUTNAM)
INTERNATIONAL CAPITAL OPPORTUNITIES)
FUND, PUTNAM INTERNATIONAL EQUITY)
FUND, PUTNAM INTERNATIONAL GROWTH)
AND INCOME FUND, PUTNAM INVESTORS)
FUND, and DOES 1-100,)
)
Defendants.)

CIVIL ACTION NO. 03-12474 (MLW)
DISTRICT OF MASS.

MOTION FOR REASSIGNMENT AND TRANSFER PURSUANT TO LOCAL RULE
40.1, CONSOLIDATION AND ENTRY OF PRETRIAL ORDER NO. 1
[CAPTION CONTINUED ON NEXT PAGE]

MARIA DAGOSTINO-GANNON, Individually and)	
On Behalf of All Others Similarly Situated,)	CIVIL ACTION NO. 03-12475
)	(GAO)
Plaintiff,)	
)	
vs.)	
)	
PUTNAM INVESTMENTS TRUST, PUTNAM)	
INVESTMENT MANAGEMENT LLC, PUTNAM)	
INVESTMENT FUNDS, MARSH & MCLENNAN)	
COMPANIES, INC., PUTNAM INTERNATIONAL)	
CAPITAL OPPORTUNITIES FUND (formerly)	
known as the PUTNAM INTERNATIONAL)	
VOYAGER FUND), PUTNAM INTERNATIONAL)	
EQUITY FUND, PUTNAM INTERNATIONAL)	
GROWTH AND INCOME FUND, PUTNAM)	
INTERNATIONAL NEW OPPORTUNITIES)	
FUND, PUTNAM EUROPE GROWTH FUND,)	
PUTNAM INTERNATIONAL GROWTH FUND,)	
PUTNAM GLOBAL EQUITY FUND, PUTNAM)	
EUROPE EQUITY FUND, PUTNAM)	
INTERNATIONAL GROWTH FUND, PUTNAM)	
INTERNATIONAL GROWTH AND INCOME)	
FUND, PUTNAM INTERNATIONAL NEW)	
OPPORTUNITIES FUND and DOES 1 - 100,)	
)	
Defendants.)	

Plaintiffs Mark E. Feinstein and Maria Dagostino-Gannon by their counsel, Gilman and Pastor, LLP, Cauley Geller Bowman & Rudman LLP (“Cauley Geller”) and Bernstein Liebhard & Lifshitz LLP (“Bernstein Liebhard”), hereby move this Court for the following: reassignment and transfer of *D’Agostino-Gannon v. Putnam Investments Trust, et al.*, C.A. No. 03-12475 (GAO) (the “*D’Agostino-Gannon Action*”), pursuant to Local Rule 40.1 (E)(5) and (I); consolidation of the *D’Agostino-Gannon Action* and *Feinstein v. Marsh & McLennen Companies, Inc., et al.*, C.A. No. 03-12474 (MLW) (the “*Feinstein Action*”); and entry of the proposed Pretrial Order No. 1, submitted herewith, which, among other things, designates Cauley

Geller and Bernstein Liebhard as co-lead counsel and provides a procedure for organizing these cases.

I. THE D'AGOSTINO-GANNON ACTION SHOULD BE REASSIGNED AND TRANSFERRED

The *Feinerstein* Action, the first-filed of these two cases, was assigned to Judge Wolf, and the *D'Agostino-Gannon* Action, filed shortly thereafter, was assigned to Judge O'Toole. Because of the closeness in time of the filings, it was not possible for the *D'Agostino-Gannon* Action to be filed as a related case to the *Feinerstein* Action.

However, the two cases are related within the meaning of Local Rule 40.1 (E)(1) for the following reasons: a) there are several defendants common to both cases; b) the cases involve the same claims, as both allege violations of the Investment Company Act of 1940; c) the two cases involve the same transactions and events; and d) the two cases involve substantially the same questions of fact and law. Therefore, the initial treatment of these two cases as not related should be corrected, as provided in Local Rule 40.1 (E)(5) and (I), and the *D'Agostino-Gannon* Action should be reassigned and transferred to Judge Wolf, to whom the earlier-filed *Feinerstein* Action has been assigned.

II. THE ACTIONS SHOULD BE CONSOLIDATED FOR ALL PURPOSES

For the reasons stated above in Section I., after transfer and reassignment of the *D'Agostino-Gannon* Action, the two actions should be consolidated for all purposes. The two actions both assert class claims on behalf of all purchasers, redeemers and holders of the mutual fund shares of Putnam Funds for alleged violations of the Investment Company Act during the relevant time period. The Actions name virtually the same defendants and involve the same

factual and legal issues. They are each brought by investors who purchased Putnam Funds. Consolidation is appropriate where there are actions involving common questions of law or fact. Fed. R. Civ. P. 42 (a). *See Johnson v. Celotex Corp.*, 899 F.2d 1281, 1284 (3d Cir.) (1990). That test is met here and, accordingly, the actions should be consolidated.

III. ENTRY OF PRETRIAL ORDER NO. 1 AND APPOINTMENT OF LEAD COUNSEL

In accordance with the *Manual for Complex Litigation—Third* (2002) (the “*Manual*”), it is appropriate for the Court to enter an order setting forth procedures for the management of these cases, and appointing a leadership structure for plaintiffs’ counsel. Consistent with the recommendations of the *Manual*, plaintiffs submit for the Court’s consideration a proposed form of Pretrial Order No. 1, which provides for, *inter alia*, the consolidation of the above-captioned actions and actions subsequently filed in, or transferred to, this District; the designation of a Master File Docket number; the establishment of efficient procedures for the filing and docketing of papers with the Clerk of Court; and the appointment of lead counsel for plaintiffs. Plaintiffs’ co-lead counsel will coordinate and organize plaintiffs in the conduct of this litigation, and will ensure that the interests of all plaintiffs are represented in the prosecution of this action.

The two firms proposed as co-lead counsel here, Cauley Geller and Bernstein Liebhard, are well-suited and well-qualified to perform this role. Both firms specialize in complex class and derivative litigation, representing investors, consumers, employees and other groups in class and derivative actions pending in state and federal courts throughout the United States. Both firms also have an extensive and successful record of managing complex litigation and obtaining large recoveries for the classes and parties that they have represented. In further support of the

request to have these firms designated as co-lead counsel, the firm resumes of Cauley Geller and Bernstein Liebhard are submitted herewith as Exhibits A and B, respectively, to the Affidavit of David Pastor.

WHEREFORE, Plaintiffs Mark E. Feinstein and Maria Dagostino-Gannon respectfully request that the Court: reassign and transfer the *D'Agostino-Gannon* Action; consolidate the two actions; enter the attached proposed Pretrial Order No. 1; and grant such other and further relief as the court may deem appropriate.

Dated: January 8, 2004

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